

MONTANA INJURED WORKERS' RESOURCE COUNCIL

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A Group
Of Injured Workers
By Injured Workers
For Injured Workers
SENATE JUDICIARY

SENATE BILL 285

Montana Injured Workers' Resource Council
Senate Judiciary Committee – February 5, 2009

EXHIBIT NO. 9
DATE 2/5/09
BILL NO. SB285

"Requiring that an insurer pay costs and attorney fees for denial or termination of medical benefits that are later determined compensable by the workers' compensation court"
Introduced by Senator Larry Jent

Mr. Chairman, members of the Committee, for the record my name is Don Judge and I'm submitting this testimony today on behalf of the Montana Injured Workers' Resource Council in support of Senate Bill 285.

Mr. Chairman, members of the committee, the Montana Injured Workers' Resource Council is an organization formed more than six years ago to provide input into the ever-changing world of Workers' Compensation. It is comprised of more than 280 injured workers whom have had to navigate the perils of Montana's workers compensation system.

Under the provisions of our state constitution and statute, nothing this legislature or any future legislature does can improve the compensation for the injuries suffered by these workers, other than perhaps providing some form of cost of living adjustment in wage loss benefits. And on the contrary side, nothing you or your followers do can reduce the levels of compensation for their injuries.

However, our members are driven by their experiences in the system to do something to help improve the benefits, care and access to the system by future injured workers. That is why we are here today asking for your support of SB 285.

Most of our members had to seek the services of an attorney to receive just compensation for their work-related injuries. And most found that access to attorneys with expertise in workers' compensation law is very limited. That is because several years ago the Montana legislature limited compensation which could be recovered by attorneys in workers' compensation cases. It remains true today that there are only a handful of attorneys willing to help injured workers navigate the system because it is simply not worth their time to do so.

SB 285 won't resolve that problem, but it will take a step in the right direction by providing that if, in those few cases which are appealed all the way to the Workers' Compensation Court, the court finds that the injured worker's claim was wrongfully denied, the claimant's attorney is entitled to reasonable costs and fees to be paid by the insurer. It would also provide that if an insurer initially denies liability for a claim and subsequently accepts liability that they must pay reasonable costs and attorney fees to the claimant's attorney. This seems only fair.

Injured workers aren't out to bilk the system, and in fact a recent study by the Montana Department of Labor and Industry has shown that injured workers who remain off the job for periods of longer than six months before return to work end up losing an average of 40% of their pre-injury wages. And, simple mathematics says that if your wage loss replacement benefit is limited to 66 2/3 of your pre-injury wage not to exceed the state's average weekly wage, you are in a worsening financial position the longer you remain off work.

However, when a worker is injured they expect that their injuries will be treated promptly and sufficiently, and that they won't encounter a hassle from their employer or employer's insurer for reporting the injury and seeking appropriate treatment. I would suggest that quick treatment, full payment of medical costs and replacement of a portion of wage loss were contemplated in our state's constitution where it provides that where a worker is covered with workers' compensation he/she is precluded from suing his/her employer as a result of that injury. It's called an exclusive remedy and is intended to provide for stability, reliability and reasonable equality in dealing with workplace injuries.

When an injured worker is denied needed medical benefits that they are entitled to they really only have three choices: try to navigate the system by themselves; try to get an attorney to take their case; or, just give up and not get the treatment they need or pay for it out of their own pockets. But when an insurer denies medical benefits it's a daunting task for an injured worker to take on themselves, especially when they are in pain and have creditors harassing them.

When they try to get an attorney to help them they find that the attorney gets paid a percentage of the benefits their work obtains for the worker, including a portion of the money that should be going to the worker's doctor. And, often they are told that the amount involved is too small to make it financially viable for the attorney to take their case. Sometimes they will find an attorney who will take their case even though the attorney will end up basically working for nothing. But too often they simply won't be able to get an attorney's help.

Does this seem fair or honest? We don't think so. During a worker's time of injury, wage loss and denial, the Insurer doesn't lose money – THE WORKER DOES. So incentive to settle the case, review the case or reverse the initial decision to deny claims is not there for the Insurer. They currently lose nothing by wrongly denying claims. In fact, only workers, their families, their attorneys and their medical providers lose. Gone is the equality.

Senate Bill 285 simply tries to provide some balance in the system and to forewarn Insurers that if they wrongfully deny an injured worker's claim, they can expect to pay a price.

We believe that this legislation is fair to the attorneys working in this very specialized business, they should get paid for their work helping an injured worker get the benefits that the legislature says they are entitled to. It is fair to medical providers, they should get paid for the services they provide. It is fair to insurers, all they have to do is promptly pay the benefits that they are supposed to pay in the first place. But most importantly, it is fair to injured workers and their families to get the benefits and medical treatments to which they are entitled. It won't help our members who have already gone through the system, but it may prevent another Montana worker and his or her family from suffering needlessly.

We urge your committee to give SB 285 a "do pass" recommendation. Thank you.

Don Judge

Montana Injured Workers' Resource Council